

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA,**

**Plaintiff,**

**v.**

**Civil Action No. 2:18-mc-00048**

**SOUTHERN COAL CORPORATION,**

**Defendant.**

**ORDER**

By Order entered April 9, 2019, this Court granted Plaintiff's Motion to Compel Discovery (ECF No. 24). Defendant was ordered to fully and completely respond to Plaintiff's Post Judgment Interrogatories and Requests for Production of Documents within fourteen (14) days of entry of the Order. On April 23, 2019, Defendant filed its First Supplemental Responses and Objections to Plaintiff National Union Fire Insurance Company's First Set of Post-Judgment Interrogatories and Requests for Production of Documents (ECF No. 25). The Order further stated that the Plaintiff "may file a detailed affidavit of their reasonable expenses incurred in making the motion, including attorney's fees, or on or before April 30, 2019. Defendant may file its response to the affidavit within seven days from the date of receipt of Plaintiff's affidavit." (ECF No. 24 at p. 3).

On April 29, 2019, Plaintiff filed the Affidavit of Richard F. Shearer in Support of National Union's Application for Attorneys' Fees and Costs seeking \$3,055.20 in fees and costs (ECF No. 26). Defendant did not file a response to the Affidavit. Due to Defendant's lack of response, the Court will rule on Plaintiff's Affidavit without a response from Defendant.

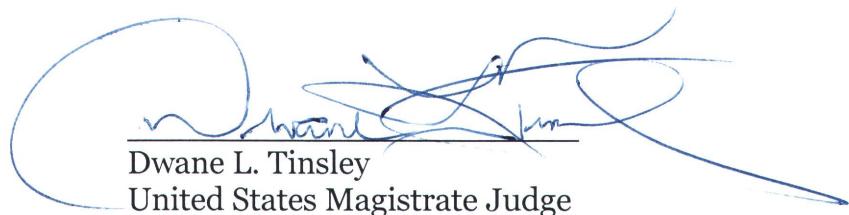
Pursuant to Rule 37(a)(5)(A) of the Federal Rules of Civil Procedure, if a motion to compel, such as the one filed by Plaintiff, is granted “the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees,” unless (1) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action, (2) the opposing party’s nondisclosure was substantially justified or (3) other circumstances make an award of expenses unjust. Fed. R. Civ. P. 37(a)(5)(A).

The Court has considered Plaintiff’s Affidavit and finds that \$3,055.20 in costs and expenses<sup>1</sup> is reasonable in light of the fact that Plaintiff had to file the Motion to Compel. Before filing the Motion to Compel, Plaintiff made a good faith effort to obtain the discovery without court intervention. Additionally, there are no circumstances that make an award of expenses unjust.

Accordingly, it is **ORDERED** that Defendant’s counsel pay Plaintiff \$3,055.20 in attorney fees pursuant to Rule 37(a)(5)(A) **within two weeks of this Order.**

The Clerk is directed to transmit a copy of this Order to counsel of record and any unrepresented party.

Enter: May 23, 2019



Dwane L. Tinsley  
United States Magistrate Judge

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<sup>1</sup>Plaintiff’s counsel represents that 7.6 hours of partner time was expended in January 2019 regarding its Motion to Compel.